

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

FLOR PECINA	§	
<i>Plaintiff</i>	§	
	§	
V.	§	Civil Action No. <u>2:20-cv-54</u>
	§	JURY
UNITED NATIONAL INSURANCE	§	
COMPANY,	§	
<i>Defendant.</i>	§	

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, United National Insurance Company (“Defendant”) hereby files this Notice of Removal from the District Court, 156th Judicial District, of Aransas County, Texas to the United States District Court for the Southern District of Texas, Corpus Christi Division. In support of this Notice, Defendant respectfully shows as follows:

Preliminary Statement

1. This lawsuit involves a dispute over Defendant’s handling of Plaintiff’s insurance claims for damages to her property from Hurricane Harvey. United National Insurance Company is not a citizen of Texas. Accordingly, there is complete diversity between the parties, and as the amount in controversy exceeds \$75,000, removal is proper in this case.

Procedural Background

2. On August 25, 2019, Plaintiff filed an Original Petition, Jury Demand, Request for Disclosure, Request for Production, Interrogatories, and Request for Admission styled *Flor Pecina v. United National Insurance Company*, Cause No. 19-0277, in the District Court, 156th Judicial

District, of Aransas County, Texas. Defendant was served with the Original Petition on January 31, 2020. Defendant also demanded a trial by jury in its Original Answer filed on February 24, 2020 in the District Court, 156th Judicial District, of Aransas County, Texas.

3. This Notice of Removal has been filed within 30 days after receipt of the Petition as required by 28 U.S.C. § 1446(b).

Nature of the Suit

4. This lawsuit involves a dispute over the handling of Plaintiff's insurance claim for damages to her property resulting from a storm. Plaintiff claims she is entitled to an amount not to exceed \$75,000 for claims arising out of alleged damage to her residence sustained as a result of Hurricane Harvey in August 2017. The insured property is located within Aransas County, Texas, which is within the Southern District of Texas, Corpus Christi Division. Plaintiff asserts causes of action for breach of contract, violations of the Texas Insurance Code and bad faith against Defendant. Plaintiff seeks to recover actual damages, exemplary damages, and attorneys' fees. Defendant generally denies Plaintiff's claims. Defendant generally and specifically denies Plaintiff's claims, and Defendant has also pleaded a counterclaim against Plaintiff.

5. The storm which allegedly damaged the Plaintiff's property occurred on or around August 25, 2017. Plaintiff thereafter submitted a claim to Defendant against the Policy covering her property.

6. Defendant assigned an independent adjuster, Francisco Diaz, to adjust the claim.

7. Plaintiff alleges that Defendant was not diligent in investigating Plaintiff's loss and/or paying her claim.

Basis for Removal

8. Removal of this action is based on diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff is a Texas resident who is domiciled in Aransas County, Texas. *See Plaintiff's Original Petition, contained in Exhibit A.*

9. Defendant is a Pennsylvania company with its principal place of business in Bala Cynwyd, Pennsylvania. It is a wholly owned, direct subsidiary of American Insurance Service, Inc., a Pennsylvania corporation. Accordingly, Defendant is domiciled in and a resident of Pennsylvania. *See Affidavit of Eric Kehs.*

10. There is complete diversity of citizenship between the parties.

11. This Court has original jurisdiction over this case because it is a suit between citizens/entities of different states, and the claimed damages have the potential to exceed \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a). Although Plaintiff attempts to prevent removal by including in her Petition a statement that she is not seeking an amount in excess of \$75,000.00, that attempt is improper insofar as it does not constitute a binding stipulation, and also because seeking a maximum amount not to exceed \$75,000.00 is not supported by the facts contained in other documentation as well as the damages sought in the Petition.

12. The pre-suit Notice of Claim letter demanded economic damages in the amount of \$41,020.83. *See Exhibit B, Plaintiff's Notice of Claim Letter.* Plaintiff's Petition seeks treble damages, which, if applied to the alleged economic damages amount previously demanded, would bring the total to \$123,062.49. This on its own exceeds the jurisdictional threshold amount. Plaintiff's attempt to put a \$75,000 cap on her potential recoverable damages is a clear attempt to simply avoid removal from state court to federal court.

The Removal is Procedurally Correct

13. Defendant was served with the Original Petition on January 31, 2020. Therefore, this Notice of Removal is filed within the 30-day time period required by 28 U.S.C. § 1446(b).

14. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to the Plaintiff's claim allegedly occurred in this district.

15. Exhibit "A" to this Notice contains copies of all process and pleadings filed in the state court proceeding in Aransas County, Texas.

16. United National Insurance Company is the sole Defendant in this removed action; consequently, all Defendants join in and consent to this Removal.

17. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Clerk of the County Courts for Aransas County, Texas and served upon Plaintiff through her counsel of record.

WHEREFORE, Defendant hereby requests that this action be removed from the District Court, 156th Judicial District, of Aransas County, Texas to the United States District Court for the Southern District of Texas, Corpus Christi Division, and that this Court enter such further orders as may be necessary and appropriate.

Dated February 24, 2020

Respectfully submitted,

/s/ Richard J. Kasson _____
RICHARD J. KASSON
Attorney-in-Charge
State Bar No. 24002392
Southern District of Texas Federal ID No. 21614
rkasson@gcaklaw.com
REBECCA H. ADUDDELL

State Bar No. 24097280
Southern District of Texas Federal ID No. 3050524
raduddell@gcaklaw.com
GONZALEZ, CHISCANO, ANGULO & KASSON, P.C.
9601 McAllister Freeway, Suite 401
San Antonio, Texas 78216
Phone: (210) 569-8500
Fax: (210) 569-8490

**ATTORNEYS FOR DEFENDANT, UNITED
NATIONAL INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this the **24th** day of **February 2020**, a true and correct copy of the foregoing instrument was duly served upon all counsel of record via the Court's electronic filing system, facsimile and/or regular mail:

Anthony G. Buzbee
Christopher J. Leavitt
THE BUZBEE LAW FIRM
JP Morgan Chase Tower
600 Travis, Suite 6850
Houston, Texas 77002
Email: tbuzbee@txattorneys.com
cleavitt@txattorneys.com

Stephen R. Walker
Gregory J. Finney
Juan A. Solis
Law Offices of Manuel Solis, PC
6657 Navigation Blvd.
Houston, Texas 77011
Email: swalker@manuelsolis.com
gfinney@manuelsolis.com
jusolis@manuelsolis.com

/s/ Richard J. Kasson
RICHARD J. KASSON

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

FLOR PECINA
Plaintiff

§§§§§§§§

V.

Civil Action No. 2:20-cv-54
JURY

**UNITED NATIONAL INSURANCE
COMPANY**
Defendant.

卷之三

AFFIDAVIT OF ERIC KEHS

STATE OF ARIZONA

卷之三

COUNTY OF MARICOPA

38

BEFORE ME, the undersigned authority, on this day personally appeared ERIC KEHS, who, being by me duly sworn, deposed as follows:

"My name is ERIC KEHS. I am over the age of eighteen (18) years, of sound mind, and competent to make this affidavit. I have never been convicted of a felony nor a misdemeanor involving moral turpitude. I am a Property Claims Manager for American Reliable Insurance Company, which was purchased by Global Indemnity Group, Inc. United National Insurance Company is one of Global Indemnity Group, Inc.'s indirect subsidiary insurance companies, and I have personal knowledge of the facts herein stated and they are true and correct.

United National Insurance Company is incorporated in Pennsylvania with its principal place of business in Pennsylvania. United National Insurance Company is not a citizen of Texas.”

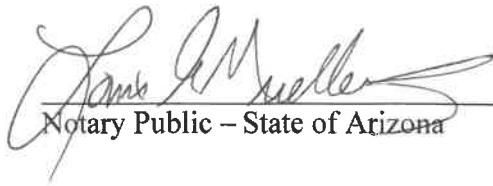
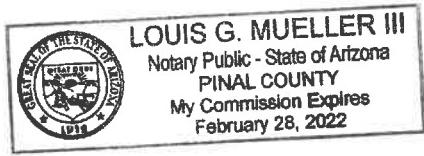
Further, Affiant sayeth naught.

SIGNED this 24 day of February, 2020.

ERIC KEHLS

**Property Claims Manager – American Reliable
Insurance Company.**

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 24th day of February, 2020, witness my hand and seal of office.



A handwritten signature in black ink that reads "Louis G. Mueller". A horizontal line extends from the end of the signature across the page.

Notary Public – State of Arizona

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS <p>(b) County of Residence of First Listed Plaintiff _____ <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p>		DEFENDANTS <p>County of Residence of First Listed Defendant _____ <small>(IN U.S. PLAINTIFF CASES ONLY)</small></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>									
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td style="width: 50%;"><input type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small></td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small></td> </tr> </table>		<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small>	<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;"> PTF DEF Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State </td> <td style="width: 50%; text-align: center;"> PTF DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State </td> </tr> <tr> <td style="text-align: center;"> Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation </td> <td style="text-align: center;"> <input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6 </td> </tr> </table>		PTF DEF Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	PTF DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small>										
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>										
PTF DEF Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	PTF DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State										
Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6										
Click here for: Nature of Suit Code Descriptions.											
CONTRACT		TORTS									
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice									
REAL PROPERTY		CIVIL RIGHTS									
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		PRISONER PETITIONS									
Habeas Corpus: <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions									
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <small>Brief description of cause:</small>									
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION <small>UNDER RULE 23, F.R.Cv.P.</small>	DEMAND \$ <small>REINSTATED OR REOPENED</small>	<small>TRANSFERRED FROM ANOTHER DISTRICT (specify)</small>							
VIII. RELATED CASE(S) IF ANY		<small>(See instructions):</small>		<small>CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No</small>							
<small>DATE</small>		<small>SIGNATURE OF ATTORNEY OF RECORD</small>									
FOR OFFICE USE ONLY											
<small>RECEIPT #</small>		<small>AMOUNT</small>		<small>APPLYING IFFP</small>							
				<small>JUDGE</small>							
				<small>MAG. JUDGE</small>							